

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed September 16, 2009. At the time of the Office Action, Claims 1-20, 38-42 and 48-50 were pending in this Application, and Claims 21-37, 43-47 and 51-52 were previously cancelled due to an election/restriction requirement. All pending Claims 1-20, 38-42 and 48-50 were rejected in the Office Action. Independent Claims 1, 38, 40, and 48-50 are herein amended. Applicant respectfully requests reconsideration and favorable action in this case.

The Independent Claims are Allowable over *Walter*.

Claims 1-20, 38-42 and 48-50 were rejected by the Examiner under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,246,995 issued to Joanne S. Walter et al. ("*Walter*").

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "the identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

For a variety of reasons discussed below, *Walter* does not show all the elements of Applicant's claims, and thus cannot anticipate Applicant's claims.

First, *Walter* does not teach "a product having ... electronic control circuits." As the Examiner previously attempted using the *Appalucci* reference, the Examiner is again attempting to equate a **barcode** (barcode 22 of *Walter*) with the "control circuits" recited in Applicant's independent claims. (Office Action, Pages). Applicant assumes that the Pre-Appeal Board did not agree with this position, and thus Applicant objects to this argument being reasserted by the Examiner.

Applicant maintains the position that a barcode simply cannot be equated with a "control circuit," as restates the various reasons below. Contemporaneous to Applicant's Response dated July 25, 2008, Applicant submitted an Information Disclosure Statement ("IDS") including the definition of the term "bar code" from the Merriam-Webster Online Dictionary. Merriam-Webster defines "bar code" as a "a code consisting of a group of printed and variously patterned bars and spaces and sometimes numerals that is designed to be scanned and read into computer memory and that contains information (as identification) about the object it labels." Merriam-

Webster Online Dictionary (2008) (retrieved June 30, 2008). Thus, a “bar code” is merely a label that identifies or provides information regarding a product or item. In no way can the definition provided above be construed to include a “control circuit” because a bar code is not a “circuit” nor does it provide “control.” Further to this point, in an IDS dated December 1, 2008, Applicant submitted definitions of “control” and “circuit.” From those definitions, it is abundantly clear that under no reasonable interpretation can “barcode” include a “control” or a “circuit,” let alone a “control circuit.” In fact, the present application explicitly contemplates that a barcode and a control circuit are not and cannot be equivalent. For example, see Figures 3 and 7 and associated specification text.

Despite the clear distinctions between a barcode and a “control circuit,” Applicant has currently further amended the claims to explicitly recite that the control circuit is an “**electronic control circuit**” that is **activated** by a verification and activation module. A barcode clearly cannot be equated to an *electronic circuit* of any type, much less an “electronic control circuit.”

Further, *Walter* does not teach **activation of an electronic control circuit** at all, much activation of a product’s electronic control circuit in order to **enable electronic operation of the product**, as recited in Applicant’s independent claims. As discussed above, a barcode cannot be equated with an electronic control circuit. Accordingly, a barcode cannot be **activated** in any way. Rather, a barcode is merely a passive label that does not *do* anything, and thus cannot be *activated*. Even if the Examiner would make the specious argument that scanning a barcode is somehow equivalent to activate a control circuit (which clearly cannot be equated), scanning a barcode does not **enable any electronic operation of the product itself**. Scanning a barcode does nothing at all to the product.

Further, the Examiner has not even identified the element of *Walter* that is allegedly equated with the recited “verification and activation module.” For example, in the rejection of Claim 1, the Examiner alleges that “product or merchandise 12” is equated with the recited “product” and that “barcode 22” is equated with the recited “control circuit”, but provides no indication of what element of *Walter* he is equating with the “verification and activation module.”

For at least these reasons, *Walter* clearly does not teach the limitations of Applicant’s independent claims. Thus, Applicant respectfully requests reconsideration and allowance of independent Claims 1, 38, 40, and 48-50, as well as all claims that depend therefrom.

The Dependent Claims are Allowable over *Walter*.

In addition to depending from the independent claims, shown above to be allowable, the dependent claims include further limitations not taught by *Walter*.

The Examiner's rejections of the various dependent claims are meritless. For example, regarding dependent Claim 2, the Examiner alleges that *Walter* (figure 1; abstract; col. 1, line 5 to col. 2, line 2; and col. 2, lines 31-67) teaches "wherein the verification and activation module is removably coupled to the product." (Office Action, page 3). However, the cited portions of *Walter* teach nothing about anything (barcode 22 or anything else) being removably coupled to *Walter*'s product or merchandise 12. Further, as discussed above, the Examiner has not even identified the element of *Walter* that is allegedly equated with the recited "verification and activation module."

As another example, regarding dependent Claim 3, the Examiner alleges that *Walter* (figure 1; abstract; col. 1, line 5 to col. 2, line 2; and col. 2, lines 31-67) teaches "wherein the control circuits of the product are deactivated when the verification and activation module is not coupled to the product." (Office Action, page 3). However, the cited portions of *Walter* teach nothing about any type of **deactivation** (e.g., a barcode 22 certainly cannot be deactivated), much less a deactivation of control circuit of a product when a verification and activation module is not coupled to the product.

As another example, dependent Claims 4-9 recite various information (e.g., purchase date and price of the product, warranty information for the product, manufacturer of the product, etc.) that is *programmed into the verification and activation module*, which is *coupled to the electronic control circuits of the product*. First, as discussed above, the Examiner has not identified any element of *Walter* that can be equated with the recited "verification and activation module." *Walter* does not teach any element that is *coupled to electronic control circuits in a product* -- e.g., removably attached to the product -- that stores such information as recited in dependent Claims 4-9. Such information certainly is not programmed in barcode 22 on the product. In fact, there is no information programmed into a barcode, as a barcode is simply a label. The only place such information could be stored is in server 24, which is not removably or otherwise coupled to electronic control circuits in a product or merchandise 12.

Similar arguments apply to the other dependent claims.

For at least these reasons, as well as because they depend from the independent claims (shown above to be allowable), Applicant respectfully requests reconsideration and allowance of all dependent claims.

CONCLUSION

Applicant has made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicant respectfully requests reconsideration of the pending claims.

Applicant respectfully submits a Petition for One-Month Extension of Time. The Commissioner is authorized to charge the fee of \$130.00 required to Deposit Account 50-4871 in order to effectuate this filing.

Applicant believes there are no other fees due at this time. However, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-4871 of King & Spalding L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512-457-2030.

Respectfully submitted,
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